

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA,

Plaintiff,

v.

PRD 091 018 622

PROTECCION TECNICA ECOLOGICA, INC., and
COMPANIA GANADERA DEL SUR, INC.

Defendants.

6/30/93
DRAFT 5/19/93

Civil Action No.

ATTORNEY CLIENT

PRIVILEGED

ATTORNEY WORK PRODUCT

NOT APPROVED BY DEPT.
OF JUSTICE

Amended Consent Decree

WHEREAS, plaintiff, the United States of America, on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a Complaint in or about October, 1986 in this action against, inter alia, Proteccion Tecnica Ecologica Inc. ("Proteco") and Compania Ganadera Del Sur, Inc. ("Ganadera") (hereinafter collectively referred to as the "Defendants") alleging violations of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § /, et seq. and applicable regulations, with respect to a facility located at /.

WHEREAS, pursuant to the authority of Sections 3008(a) and (g) of RCRA, 42 U.S.C. §{ 6928(a) and (g), the Complaint sought injunctive relief and the imposition of civil penalties for violations of RCRA;

WHEREAS, the United States and defendants resolved the law suit and entered into a Consent Decree ("Decree") that was

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entered by the Court in October, 1987, and which provided, inter alia, that defendants would pay to the United States //// in civil penalties, plus interest, over a five year period, and also perform certain injunctive relief;

WHEREAS, in or about February, 1991, the United States filed a Motion to Enforce Decree and to Amend and Supplement the Complaint alleging that defendants violated certain provisions of the Decree, and provisions of RCRA and the regulations promulgated thereunder subsequent to the lodging of the Consent Decree;

WHEREAS, in or about March, 1993 the United States and Proteco entered into an Agreed Order for One Year Stay of Penalty Payments in which the parties agreed that the penalty payments which Proteco was required to make under the Decree be stayed for one year and the monies that Proteco would have paid into the penalty escrow account established by Order of this Court during that year were to be devoted to closure of the Facility's drum storage unit, subject to the conditions set forth in the Agreed Order;

WHEREAS, Proteco is a corporation which does business in Puerto Rico and which at all relevant times operated, and continues to operate, a facility located at Penuelas, Puerto Rico;

WHEREAS, Ganadera is a corporation which does business in Puerto Rico and which at all relevant times owned, and continues

to won, the facility located at Penuelas, Puerto Rico which is operated by Proteco;

WHEREAS, plaintiff, the United States of America, and Defendants agree that settlement of this matter in accordance with this Amended Consent Decree is in the best interest of the parties and the public and that the entry of this Amended Consent Decree without further litigation is the most appropriate means of resolving this action;

NOW, THEREFORE, without any adjudication of any issue of fact and upon consent and agreement of the parties to this Amended Consent Decree,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

I. JURISDICTION

1. This Court has jurisdiction over the parties and the subject matter herein pursuant to Section 3008 of the Act, 42 U.S.C. § 6928. Venue is proper in this district under Section 3008 of the Act. Defendants waive any and all objections it may have to the Court's jurisdiction, and, for purposes of this Amended Consent Decree, agree to submit to the Court's jurisdiction. Notice of the commencement of this action has been given to the Puerto Rico Environmental Quality Board.

II. PARTIES BOUND AND NOTIFICATION

2. The provisions of this Amended Consent Decree shall apply to and be binding upon the United States and each Defendant, their officers, directors, agents, servants, employees, predecessors in interest, successors in interest, and

assigns, and upon all persons, firms, subsidiaries, divisions, or corporations acting under or for it.

3. The undersigned representative of each Defendant certifies that he or she is fully authorized to enter into this Amended Consent Decree and to execute and to legally bind the Defendant they represent to this Amended Consent Decree. Each Defendant shall provide a copy of this Amended Consent Decree to each of its officers and directors, and to each agent, servant, employee, assignee, or contractor responsible for performance of the obligations under this Amended Consent Decree.

4. In the event that either Defendant sells, transfers, or assigns any interest in its business subject to this Amended Consent Decree, such Defendant shall advise the purchaser(s), transferee(s), or assignee(s) prior to such transaction, in writing, of the existence of this Amended Consent Decree and simultaneously provide a copy of the Amended Consent Decree to it. Thirty days prior to the completion of the transaction, such Defendant shall provide in writing to EPA Region II, at the address provided in Section /// hereof, the date of the transaction and the name(s) and address(es) of such purchaser(s), transferee(s), or assignee(s). Written notice shall simultaneously be given to the other Defendant. This provision does not relieve Defendants of their obligation to comply with the notice requirements found at 40 C.F.R. § 270.72.

5. In the event that defendant Ganadera sells or otherwise transfers the real property on which the facility is

located to Proteco, the liability of Defendant Ganadera incurred under the terms of this Revised Amended Consent Decree shall be transferred and imputed to Proteco upon the transfer of ownership of the facility or any part of it, and the documents memorializing the sale or transfer of the facility shall expressly state that Proteco shall assume without any limitation, any and all liability that may have incurred by Ganadera under the terms of this Amended Consent Decree. The documents memorializing the sale or transfer of the facility shall incorporate the access provisions of this Amended Consent Decree set forth in Section // such that the new landowner shall comply with this access provision. Ganadera shall remain fully liable under this decree if it does not sell or otherwise transfer the property that is the subject matter of this Amended Consent Decree.

III. DEFINITIONS

6. Unless otherwise stated in this Consent Decree, the terms used in this Amended Consent Decree that are defined in RCRA, 42 U.S.C. Section 6901 et seq., and the regulations promulgated thereunder, at 40 C.F.R. Parts 260 through 271, shall have the meanings set forth therein.

7. In addition, whenever the terms listed below are used in this Amended Consent Decree, the following definitions shall apply.

a. "Facility" or "Proteco facility" shall mean the facility, as that term is defined at 40 C.F.R. 260.10

operated by Proteco and owned by Ganadera and located at Carr, 512, Km 3, Hm.4, Penuelas, Puerto Rico.

b. "EPA" shall mean the United States Environmental Protection Agency;

c. "Closure Plan" shall mean the final and approved closure plan submitted by Proteco to EPA.

d. Unless otherwise indicated, the term "day" or "days" as used herein shall mean a calendar day or days. References to "working days" shall mean days of the week other than Saturdays, Sundays, holidays, and days containing half-holidays.

e. "United States" shall mean the United States of America, including its agencies (including but not limited to EPA), departments, and instrumentalities.

IV. COMPLIANCE

8. Defendants shall comply with the requirements of the Act, and the regulations promulgated thereunder with respect to the treatment, transport, storage and disposal of hazardous waste at its facility, including all applicable closure and post closure requirements.

9. Defendants shall make diligent and best efforts to secure from the Puerto Rico Environmental Quality Board and/or EPA any permits which are required to comply with this Amended Consent Decree, and to ensure closure of the facility pursuant to RCRA. Closure includes post closure care, if necessary. Such permits may be required under RCRA, the Clean Air Act, 42 U.S.C.

10. Proteco shall close all hazardous waste units at its facility under the oversight of EPA and pursuant to closure plans which are approved by EPA. The units requiring closure include: **CLIFF ADD LIST OF EACH UNIT**. These units shall be closed in a three phases but the drum storage area (unit 4) and the oil lagoon (unit 9) shall be the first units to be closed.

11. Phase 1 of closure. Phase 1 of closure is comprised of the drum removal. Proteco initiated the drum removal on or about on February 1, 1993 and shall continue the drum removal in accordance with the drum removal plan approved by EPA on ///// and the schedule set therein. The drum removal shall be completed by Feb. 1, 1994. In the case of delays due to an unforeseen circumstance which are not attributable to Proteco or its agents (including its contractors and subcontractors), the drum removal may be completed by such other date approved by EPA. Proteco shall fund this drum removal according to the terms of the Agreed Order for One Year Stay of Penalty Payments ("Agreed Order") which was entered by the Court on //. As is provided in the Agreed Order, Proteco shall be required to spend or escrow at least \$40,000 per month for the drum removal until the drum removal is completed. Proteco shall document the amounts escrowed and the expenditures for the drum removal and submit such documentation to EPA pursuant to Section V of this Decree.

12. Phases 2 and 3 of closure

a. Funding for Phases 2 and 3 of Closure.

Starting February 1, 1994, Proteco shall deposit \$40,000 a month into Proteco's closure trust fund until the fund contains the estimated cost of closure of the hazardous waste units at the facility that will be closed in Phases 2 and 3 taking into account completed phases of closure and inflation adjustments, required under 40 C.F. R. § 265.142. ^{present to 40 C.F.R. 265.143,} The monies in the closure trust fund may be used for closure of Phases 2 and 3. Proteco shall document the deposits of funds into the closure trust fund and the expenditures of the funds from the closure trust fund and submit such documentation to EPA pursuant to Section V of this Decree.

b. Phase 2 of Closure: Phase 2 of closure

consists of closing units 7, 9, 4 and 15 (oil lagoon, neutralization impoundment, soil at drum storage area and lindane tank). Upon EPA's approval of the closure plan for the units described in this subparagraph, Proteco shall initiate and complete Phase 2 of closure, pursuant to the closure plan approved by EPA and ~~in accordance with the dates set forth in the~~ schedules contained in the approved closure plan. Proteco shall initiate and complete closure of the oil lagoon first, provided that the work on the oil lagoon can be accomplished without unreasonably delaying closure of the other units that shall be closed in Phase 2. Pursuant to paragraph 11 of this Decree and

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40 C.F.R. § 265.143, the monies in Proteco's closure trust fund may be used for Phase 2 of closure.

c. Phase 3 of closure. Phase 3 shall consist of the capping of units 1, 2, 3, 5, 9, 10, 11, 12, 13, 16, and 17. Units 7 and 15 shall also be included in this phase of closure unless these units are closed without waste remaining in place in each of these units. Upon EPA's approval of the closure plan for the units described in this subparagraph, Proteco shall initiate and complete Phase 3 of closure, pursuant to a closure plan approved by EPA and in accordance with the ~~dates required by the~~ schedules contained in the approved closure plan. Pursuant to paragraph ¹² of this Decree and 40 C.F.R. 265.143, the monies in the closure trust fund may be used for Phase 3 of closure.

13. Proteco shall not receive, treat, store, dispose or otherwise manage hazardous waste at the Proteco facility, except as may be required by a closure plan approved by EPA.

14. Proteco shall insure proper runoff and runoff controls and any required maintenance at its facility, including but not limited to maintaining the drum storage area, as required by 40 C.F.R Part 265 ¹³ ~~until Proteco completes the drum removal~~ ~~[(as approved by EPA.)]~~

15. If any unit is closed leaving waste remaining in place in the unit, Proteco shall submit a post-closure permit application and perform post-closure care activities, as required by RCRA. The post-closure permit application must be submitted within ninety days of completing closure of any unit subject to

post-closure care/^①~~which has been [[determined to have been]]
closed with waste remaining in place in the unit.~~

16. Groundwater monitoring and post closure:

a. Commencing on Feb. 1, 1998 or on such other date as approved by EPA, Proteco shall place monthly deposits into the post-closure trust fund. For the first five consecutive months these deposits shall be in the amount of \$40,000, for the next three consecutive months these deposits shall be in the amount of \$30,000, and beginning in the ninth month these monthly deposits shall be in the amount of \$20,000. The monthly payments of \$20,000 per month shall continue until such fund meets the estimated cost of post-closure, adjusted pursuant to 40 C.F. R. § 265.144, including groundwater monitoring if necessary.

b. In accordance with Section //✓ of this Amended Consent Decree, Proteco shall submit quarterly documentation of its post-closure activities, including groundwater monitoring, and documentation describing use of the money withdrawn from the post-closure fund pursuant to 40 C.F.R. § 265.145.

17. Proteco shall operate its solid waste business in a manner that will not impede, or add further costs to, closure of its former hazardous waste units, and shall not dispose of solid waste in these former hazardous waste units.

18. Proteco shall, on an ongoing basis, make full disclosure of its financial status to EPA. Proteco shall submit to EPA quarterly reports describing its financial condition which shall include a separate statement of each of the following: the

facility's revenues, operating expenses, net and gross profits, and any other financial information reasonably requested by the United States. Proteco shall also submit to EPA its audited annual reports and annual copies of its Commonwealth tax returns.

All such documents shall be submitted in the English language. These reports shall be submitted in accordance with Section ~~vi~~ of this Amended Consent Decree. ✓

IV. STIPULATED PENALTIES

19. During the effective period of this Amended Consent Decree, if Defendants fail to comply with any provision of this Amended Consent Decree, including compliance with the terms of any approved closure plan or post-closure plan, Defendants shall pay to the United States, automatically and without further notice or demand (or in response to notice or demand from EPA), stipulated penalties as set forth below:

<u>Cumulative Days of Noncompliance</u>	<u>Penalty Per Violation Per Day</u>
0-30	\$ 5,000
31-60	\$ 7,000
more than 60	\$ 10,000

20. All stipulated penalties begin to accrue on the day that complete performance is due or a violation occurs, and continue to accrue through, and including, the day on which such violation or other noncompliance is remedied. Nothing herein shall preclude the simultaneous accrual of separate stipulated penalties for separate violations of this Amended Consent Decree.

21. Payment of stipulated penalties pursuant to this Section shall be made within thirty (30) days following the end of each month in which the violation(s) occurred.

22. In the event that a stipulated penalty is not paid when due in accordance with paragraph 3 of this Section, the penalty shall be payable with interest from the original due date to the date of payment, at the statutory judgment rate set forth at 28 U.S.C. § 1961.

23. Stipulated penalties under this Section shall be paid by certified check payable to the "Treasurer of the United States," and tendered to the United States Attorney for the District of Puerto Rico at the address set forth in Section VIII hereof. A copy of the check and the letter tendering such check, together with a report identifying this action, setting forth the computations made in determining the stipulated penalties, the requirement(s) of this Amended Consent Decree which was not complied with, the date(s) of non-compliance, and the amount of payment shall be mailed to EPA and the United States Department of Justice at the addresses set forth in Section VIII hereof.

24. Nothing in this Section shall be construed as prohibiting, altering, or in any way limiting the rights of the United States to seek additional remedies or sanctions, pursuant to other provisions of this Amended Consent Decree or of any applicable statutes and regulations.

M.V. REPORTING REQUIREMENTS

25. Beginning on the fifteenth day of the month following the month of the entry of this Amended Consent Decree, and continuing on the fifteenth day of every third month thereafter until termination of this Amended Consent Decree, Defendant Proteco shall submit to EPA at the address set forth in Section VIII hereof status reports on Proteco's compliance with the terms of this Amended Consent Decree. Each status report shall at a minimum set forth:

- (a) Proteco's specific activities relating to the compliance requirements of this Amended Consent Decree and a certification of Proteco's compliance with all of this Amended Consent Decree, including closure activities;
- (b) any impediments encountered by Proteco in meeting the compliance requirements of this Amended Consent Decree or in meeting any other requirements of this Amended Consent Decree, and the steps taken by Proteco to overcome such impediments;
- (c) those specific activities remaining to be accomplished to comply with all terms of this Amended Consent Decree and the anticipated date on which each activity is expected to be accomplished; and
- (d) financial or quarterly or annual documentation required under Section IV of this Amended Consent Decree. *the, set*

26. The reporting requirements set forth in paragraph 1 of this Section do not relieve Proteco of its obligation to submit reports or information required by the Act or any other local, Commonwealth, or federal law, the regulations promulgated thereunder, any local or federal Permit, approved closure plans or set forth in Section IV of this Amended Consent Decree.

27. All reports or other submissions required pursuant to this Amended Consent Decree shall be signed by a corporate officer authorized to sign such documents and notarized, and shall contain the following certification: "I certify under penalty of perjury that the information contained in or accompanying this submission is true, accurate, and complete. As to the identified portion(s) of this submission for which I cannot personally verify its truth and accuracy, I certify as the corporate officer having supervisory responsibility for the person(s) who, acting under my direct instructions, made the verification, that this information is true, accurate, and complete."

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VI. CIVIL PENALTY

28. Within thirty (30) days of the entry of this Amended Consent Decree, Defendants shall pay to the United States from the penalty escrow account established by this Court by Order dated //// the amount of \$510,000, plus any other monies in the penalty escrow account, to the United States as a civil penalty. [[Except as provided in paragraph 5 of Section XIV of this Amended Consent Decree, compliance with this Section of the Decree fully satisfies Proteco's obligations to pay civil penalties to the United States pursuant to Section /// of 1987 Amended Consent Decree entered into by the parties. the Motion to Enforce the Consent Decree and the Motion to Amend and Supplement the Complaint.]]

29. In the event that the civil penalty is not paid when due without demand, the penalty shall be payable with interest from the original due date to the date of payment, at the statutory judgment rate set forth at 28 U.S.C. § 1961.

30. Payment of this civil penalty, and any interest thereon, shall be made by certified or cashier's check payable to the "United States Treasury." This check shall be sent to the United States Attorney for the District of Puerto Rico at the address set forth in Section VIII hereof and shall be accompanied by a letter referring to the name, caption, and index number of this case. Copies of the transmittal letter and check shall be sent to EPA and the United States Department of Justice at the addresses set forth in Section VIII hereof.

31. The civil penalty and stipulated penalties provided for herein are penalties within the meaning of 26 U.S.C. § 162(f), and are not tax deductible expenditures for purposes of federal, Commonwealth, or local law.

VII. EFFECT OF SETTLEMENT

[[32. This Consent Decree represents a complete settlement of all claims for violations specifically alleged in the United States' Amended and Supplemental Complaint and in the United States' Motion to Enforce Consent Decree.]]

32 33. The United States covenants not to sue defendants for violations specifically alleged in the Amended and Supplemental complaint and in the United States' Motion to Enforce Consent Decree, except as provided in this Paragraph of

the Decree. This covenant not to sue shall take effect upon the effective date of this Amended Consent Decree as determined by Section /// of this Amended Consent Decree. This covenant not to sue will remain in effect so long as Defendants are in compliance with the provisions of this Amended Decree. In the event that defendants are not in compliance with the provisions of this Decree, the United States may reinstitute its Amended and Supplement Complaint and its Motion to Enforce Consent Decree. In the event that the United States reinstitutes its Amended and Supplement Complaint and its Motion to Enforce Consent Decree, defendants shall not raise statute of limitations as a defense, except to the extent that any applicable statute of limitations had run on February ///, 1991.

34. Payment of the Civil Penalty required under Section /// of this Amended Decree shall supersede and satisfy, except as provided in Paragraph //, Proteco's obligations to pay civil penalties to the United States pursuant to Section /// of the Consent Decree entered into by the parties.

VIII. NOTICES

35. Whenever under the terms of this Amended Consent Decree notice is to be given, or a report or other document is to be forwarded by one party to another, it shall be directed to the following addresses unless otherwise provided in this Amended Consent Decree. Any such materials shall include a reference to the name, caption, and number of this action.

As to the United States:

Chief
Hazardous Waste Compliance Branch
United States Environmental Protection Agency
Region II
26 Federal Plaza
New York, New York 10278

Chief
Environmental Enforcement Section
Environment & Natural Resources
Division
United States Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044

United States Attorney
District of Puerto Rico
Federal Office Building, Rm. 101
Carlos E. Chardon Avenue
Hato Rey, Puerto Rico 00918
CHECK ADDRESS

As to Proteco:

PROTECO TO PROVIDE ADDRESS

As to Ganadera:

Ganadera to provide address

Delivery shall be considered complete upon deposit of the material at issue in the U.S. mail, or certified mail.

IX. ACCESS TO THE FACILITY; SAMPLES

36. EPA and its contractors and/or consultants shall have the authority to enter the Facility at all times for the purposes of, including but not limited to:

a. Monitoring the progress of activities required by this Amended Consent Decree, the Act and regulations

promulgated thereunder, any permits, and/or approved closure plans;

b. Verifying any data, test results, or information submitted in accordance with this Amended Consent Decree, the Act, any permits, and/or approved closure plans;

c. Obtaining samples and/or data, and, upon request, splits of any samples taken by Defendants, their agents, consultants, or contractors; and/or

d. inspecting the facility.

37. Nothing in this Amended Consent Decree in any way limits any right of entry or access available to EPA pursuant to applicable federal or Commonwealth laws, regulations, or permits.

X. RECORD RETENTION

38. Defendants shall preserve, during the pendency of this Amended Consent Decree and for a minimum of three (3) years after its termination, an original or a copy of all records, logs, and documents (including testing or sampling data and analysis) created or received by Defendants which relate in any way to performance of the obligations imposed by this Amended Consent Decree. Not less than ninety (90) days prior to destruction of any such documents, Defendants shall notify EPA in writing that destruction of documents is planned (identifying the nature of the documents and the proposed date of destruction) and make the documents to be destroyed available to EPA for inspection, copying, or retention.

39. Upon retaining any agent, consultant, or contractor, Defendants shall require such agents, consultants, or contractors to provide a copy to Defendants of all documents produced in connection with the performance of activities required under this Amended Consent Decree.

XI. DISPUTE RESOLUTION

40. Any dispute between the parties to this Amended Consent Decree which arises under or with respect to this Amended Consent Decree shall in the first instance be the subject of informal, good faith negotiations between the parties to the dispute for a period of up to twenty (20) working days from the time notice of the existence of the dispute is given. The period for negotiations may be extended by agreement of the parties to the dispute.

41. In the event that the parties cannot resolve any such dispute by informal negotiations under the preceding paragraph, then the position advanced by EPA shall be considered binding unless, within fifteen (15) days after the end of the informal negotiation period, Defendants file a petition with this Court setting forth the matter in dispute, the efforts of the parties to resolve it, and the relief requested. The United States shall then have thirty (30) days to respond to any such petition.

42. In any dispute under this Section, Defendant shall have the burden of proving that the United States' position is arbitrary and capricious.

43. Invocation of the dispute resolution procedure set forth in this Section shall not toll the accrual of stipulated penalties, any deadlines affected by the dispute, or any other requirements of this Amended Consent Decree.

XII. COMPLIANCE WITH APPLICABLE LAWS

44. This Amended Consent Decree in no way relieves Defendants of their responsibility to comply with all applicable federal, Commonwealth, and/or local laws, regulations, and/or permits, and compliance with this Amended Consent Decree shall not constitute a defense to any action pursuant to said laws, regulations, or permits. This Amended Consent Decree shall not be construed as a determination of any issue related to any federal, Commonwealth, or local permit nor shall it be construed to be a operating or post closure permit.

XIII. RESERVATION OF RIGHTS/RELEASES

45. The entry of this Amended Consent Decree shall not limit or otherwise preclude the United States from taking additional criminal or civil enforcement action with regard to the Defendants' operation and/or ownership of the Facility pursuant to any federal or Commonwealth law, regulation, or permitting condition. EPA reserves the right to seek to require Defendants to take such other corrective action or response measures as EPA deems necessary to protect human health or the environment.

46. This Amended Consent Decree does not limit or affect the rights of Defendants or of the United States against

any third parties nor the rights of third parties not parties to this Amended Consent Decree against any other parties.

47. The United States reserves any and all legal and equitable remedies, sanctions, and penalties which may be available to the United States to enforce the provisions of this Amended Consent Decree against Defendants for failure to comply with the requirements of this Amended Consent Decree, and further reserves the right to take any other action authorized by federal, Commonwealth, or local law to achieve or maintain compliance with this Amended Consent Decree.

48. Nothing herein shall be construed to limit the authority of the United States to undertake any action against any person, including Defendants, to abate or correct conditions which may present an imminent and substantial endangerment to the public health, welfare, or the environment, or for any other violation of law or regulation.

XIV. PRECLUSION OF CLAIMS AGAINST THE HAZARDOUS SUBSTANCE SUPERFUND

49. Defendants agree not to make any claims pursuant to Sections 106(b), 111 or 112 of CERCLA, 42 U.S.C. Sections 9606(b), 9611, or 9612, or any other provision of law directly or indirectly against the Hazardous Substance Superfund established by CERCLA for costs incurred in complying with this Amended Consent Decree. Nothing in this Amended Consent Decree shall be deemed to constitute preauthorization of a CERCLA claim within the meaning of Section 111 of CERCLA, 42 U.S.C. { 9611, or 40 CFR Section 300.700(d).

XV. PUBLIC COMMENT

50. Final approval of this Amended Consent Decree by the United States is subject to the public notice and comment requirements of 28 C.F.R. § 50.7. The United States may withdraw or withhold its consent if the public comments establish that entry of this Amended Consent Decree would be inappropriate, improper, or inadequate. After reviewing the public comments, if any, the United States shall advise the Court by motion whether it seeks entry of this Amended Consent Decree. Defendants agree to the entry of this Amended Consent Decree without further notice.

XVI. COSTS

51. Each party shall bear its own costs and attorneys' fees in this action.

XVII. MODIFICATION

52. No modification shall be made to this Amended Consent Decree without written agreement of all parties and written approval of the Court. Nothing in this paragraph shall be deemed to alter the Court's power to supervise or modify this Amended Consent Decree.

XVIII. RETENTION OF JURISDICTION

53. The Court shall retain jurisdiction of this matter until further Order or until termination of the Amended Consent Decree

XIX. EFFECTIVE DATE AND TERMINATION

54. This Amended Consent Decree shall be effective upon the date of its entry by the Court.

55. This Amended Consent Decree shall terminate when Defendants have attained and demonstrated full and continuous compliance with all requirements of Sections IV and VII of this Amended Consent Decree, or five (5) years from the date of entry, whichever is later.